

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANKIE WEISNER,

Petitioner,

v.

KATHLEEN ALLISON,

Respondent.

No. 2:23-cv-0662 DAD AC P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. On June 23, 2023, respondent filed a motion to dismiss the petition. ECF No. 14. After petitioner twice failed to respond to the motion, the undersigned recommended that this action be dismissed for failure to prosecute. ECF No. 20. Petitioner then filed a motion for an extension of time to respond to the motion to dismiss (ECF No. 22) and the findings and recommendations were withdrawn (ECF No. 23). Because it was unclear if petitioner had received a copy of the motion to dismiss, respondent was ordered to re-serve the motion and petitioner was given thirty days to respond. *Id.* Respondent re-served the motion on January 23, 2024. ECF No. 24. After petitioner once again failed to respond to the motion to dismiss, he was ordered to file an opposition or statement of non-opposition within twenty-one days. ECF No. 25. In the same order, petitioner was informed that failure to file an opposition would result in a recommendation that this action be dismissed without further warning. The twenty-one-day

1 period has now expired, and petitioner has not filed a response to the motion to dismiss or
2 otherwise responded to the court's order.

3 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be
4 dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 DATED: April 17, 2024

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE

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